

IN SENATE OF THE UNITED STATES.

FEBRUARY 24, 1846.

Submitted, and ordered to be printed.

Mr. BREESE made the following

REPORT:

[To accompany bill S. No. 92.]

The Committee on Public Lands, to whom was referred the petition of Henry Newman, have had the same under consideration, and ask leave to report :

That it appears from the papers submitted, that the petitioner, in 1817, became the purchaser, at the St. Stephen's land office, in the State of Alabama, of fractional section numbered 36, in township 4 of range 2 east, containing 635 acres. For this land, containing this quantity, he obtained a patent from the United States, dated the first of September, 1824.

Diagram A, will show the lines of the survey, as returned to the land office at St. Stephen's, of fractional section 36 and its contents.

Subsequent to the sale to the petitioner, and to the emanation of the patent, it was discovered that the course of the Tombigbee river, from the points where the lines of section 36 touched it, southerly into section 37, and westerly to the sectional and township line, was either not meandered at all by the surveyor of the United States, or meandered very inaccurately. Whereupon, in 1839, a resurvey of that and the adjoining sections, 35 and 37, in township 4, range 2, was ordered, actually made, and duly returned, by which it was shown that the river, instead of leaving entirely section 36, as indicated on diagram A, after passing into section 37, re-entered 36 by a large bend northerly, dividing the section into two parts, severally containing, exclusive of the bed of the river, which occupies 67.61 acres, 458.67 acres on the west side of the river, and 108.72 acres on the east side, as will appear by diagram B. The sections noted on that diagram as 5, 6, 7, were originally, before the resurvey, noted as 35, 36, 37, and corrected on the plat in pursuance of an act of Congress for the relief of Henry Newman and others, passed on the 2d July, 1836.—(*Laws U. S., vol. 9, pp. 505-'6.*)

After this act was passed, the petitioner presented his patent at the General Land Office, on the 10th of May, 1842, to have it corrected according to this resurvey. On it, the acting Commissioner made the following endorsement :

“GENERAL LAND OFFICE,
“May 10, 1842.

“It is hereby certified that under and in virtue of an act of Congress of July 2d, 1836, class No. 280, act 1st session 24th Congress, entitled ‘An

Ritchie & Heiss, print.

act for the relief of Henry Newman and others,' the designation of the fractional section described in the within patent as numbered thirty six, and as containing six hundred and thirty five acres of land, has been corrected in the manner prescribed by said act; and the said fractional section is now designated and is hereafter to be known as number six, instead of number thirty six, and as containing four hundred and fifty-eight acres and sixty-seven hundredths of an acre, instead of six hundred and thirty-five acres."

In 1840, the petitioner applied to the Commissioner of the General Land Office for compensation for this loss, ascertained by the resurvey of the section, which that officer declined to make. See his letter of the 16th July, 1840, hereto annexed.

On the 16th of May, 1842, after his patent had been corrected and the quantity of acres lessened by the Commissioner, as shown by the endorsement upon it, he applied to Congress for relief, and a bill was reported in his favor, but not acted on.

He again applies for relief, and prays that the 108.72 acres, which once made, according to the survey by which he purchased, a component part of section 36, thus severed from it by the bend of the river, as shown on diagram B, may be granted to him; and for the remaining 67.61, covered by the river, which was also calculated in the area of the fractional section he purchased, and paid for at the rate of two dollars per acre, near thirty years ago, the purchase money therefor may be refunded to him.

The question presented is, is the petitioner entitled to the relief prayed for, or to any relief?

By the act of 11th February, 1805, entitled "An act concerning the mode of surveying the public lands of the United States," (3d vol. Laws U. S., p. 639,) it is provided that the surveyors of the land south of the State of Tennessee shall establish the corners of each section, and they "shall be the corners of the sections which they were intended to designate;" and the boundary lines of the sections actually run and marked shall be the established boundary lines, and be held and considered as the true lengths thereof, and that the boundary lines not actually run and marked shall be ascertained by running straight lines from the established corners to the opposite corresponding corners. But, in those fractions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary lines shall be established by running from the established corners due north and south, or east and west lines, as the case may be, to the watercourse, Indian boundary line, or other external boundary of such fractional township, and that the contents of each section, as returned by the surveyor, shall be held and considered as "the exact quantity," as expressed in such return. An examination of diagram A will show that the corners of the section were established, the exterior lines run, and the contents of the section noted on the margin as "the exact quantity" contained in it.

These corners, lines, and contents marked on the plats of the surveyors, control the purchasers of public lands, and should control the government. They are the "representations" government makes to the purchaser; and if they prove to be false, and a loss happens thereby, it would seem to be but common justice to make compensation for it. The petitioner was necessarily governed in his purchase by the plat of the survey made by a sworn surveyor, and was not required to look beyond it. These plats are presumed

to be accurate, and are the only guide for purchasers. It is most manifest that the petitioner did actually buy and pay for 635 acres of land, and the government intended to sell that quantity to him; but if the Commissioner's endorsement upon the patent be valid, and is to have the effect to set aside the grant of 1824 for this quantity, the petitioner will have a legal title to only 458.67 acres; suffering a clear loss of 176.33 acres.

As the act of July, 1836, only authorizes the correction of the numbers of the sections, this attempted reduction of the quantity granted would, perhaps, be considered, in a court of law, as beyond the competency of that officer, and of no legal effect; yet it seems to cast a shade over the title of the petitioner to the whole quantity purchased, and may subject him to great expense and eventual loss.

The Commissioner, in his letter of the 16th July, 1840, locates the land patented "west of the Tombigbee river," whereas the patent does not, and seems to suppose that, as the government could not claim compensation for any excess of land that might be contained in a tract sold, so neither should the purchaser be entitled to compensation for any deficiency. It may be that he would not be justified in allowing such compensation, it not being within the scope of his general and ordinary powers; yet, that Congress can, and under certain circumstances should allow compensation to a purchaser, cannot be questioned. It will be perceived that the grant, as evidenced by the patent, does not locate the land purchased west of the Tombigbee river; and, therefore, it cannot, by any act of the Commissioner, be confined there. It is for 635 acres in township 4 and range 2 east, and that is the only description.

The government has the power to make the surveys correct in the first instance, and can require that the most approved means and instruments shall be used for that purpose; and, therefore, should not be entitled to reclamation for any excess of quantity; whilst, for the same reason, it should be answerable for any considerable deficiency, caused by a resurvey of its own ordering, after a purchase under an original survey of like high authority. The committee think this is a case appealing strongly to the justice and equity of Congress, and, therefore, report a bill for the relief of the petitioner, and append hereto the diagrams referred to, and the correspondence which has taken place with the General Land Office on the subject, and also an exemplification of the patent issued to the petitioner in 1824.

[No. 103.]

JAMES MONROE, *President of the United States of America, to all to whom these presents shall come, greeting:*

Know ye, That Henry Newman, of Boston, having deposited in the General Land Office a certificate of the register of the land office at St. Stephen's, whereby it appears that full payment has been made for the fractional section thirty-six, in township four, of range two east, containing six hundred and thirty-five acres of the lands directed to be sold at St. Stephen's, in pursuance of the laws providing for the sale of the lands of the United States in Mississippi and Alabama, there is granted, by the United States, unto the said Henry Newman, and to his heirs, the fractional lot or section of land above described: to have and to hold the said fractional lot or section

of land, with the appurtenances, unto the said Henry Newman and to his heirs and assigns forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of September, in the year of our Lord one thousand eight hundred and [L. s.] twenty-four, and of the independence of the United States of America the forty-ninth.

By the President,

J. M.

G. G.,

Commissioner of the General Land Office.

Recorded in volume 13, page 102.

GENERAL LAND OFFICE, *July 16, 1840.*

SIR : I have the honor to acknowledge the receipt of your communication of the 8th instant, calling my attention to your previous letter of the 13th of April last and its enclosures, relative to the case of Mr. Henry Newman, and requesting the opinion of this office as to his application to have refunded either a part or the whole of his purchase money for fractional section 36, (since correctly numbered 6,) township 4 south, range 2 east, west of the Tombigbee river.

The subject being one that required considerable investigation to arrive at all the facts before an answer could be prepared, I regret that your first letter was mislaid until after the receipt of your letter of the 8th instant, and I hasten to reply.

Enclosed is a copy (marked A) of the official plat, duly certified by the surveyor general, according to which it appears the whole of the lands west of the Tombigbee river were sold and patented many years since. Under the provisions of the 2d section of the act entitled "An act concerning the mode of surveying the public lands of the United States," approved February 11, 1805, which require that the corners, boundary lines, measurements, and contents, established, marked, ascertained, and returned by the surveyor general, shall be taken and considered as the true corners, boundaries, measurements, and contents, the patents having been all issued in this case, it is not competent for this department to make any corrections of errors in the original survey, to refund any part of the purchase money for deficiencies in quantity, nor to demand payment for excesses. In regard, therefore, to the claim of Mr. Newman, he will be entitled under his patent to all the land in the section described therein west of the Tombigbee river, whether it shall be found to contain more or less than the quantity paid for, but no portion of the purchase money can be refunded.

Since the passage of the act of 2d July, 1836, for the relief of Henry Newman and others, which merely authorizes the correction of the erroneous numbering of the sections as therein explained, the surveyor general was directed to correct the plat as authorized by the act; and he has forwarded a plat to this office, of which a copy is herewith enclosed, marked B, which also shows the true course of the river, varying considerably, as will be perceived, from the original survey; but, although this plat may afford useful information to the purchasers, this office, under existing provisions of law, cannot correct the quantities for which the several tracts were originally sold and patented, whether the error be for or against the purchasers. Thus Mr. Newman, as the purchaser of fractional section 6, west of the Tombigbee river, will be entitled to all that portion of said section west of the river which it appears contains by the new plat 458.67 acres, the west bank of the river being the natural boundary of his purchase, according to the plat upon which the patent issued; in like manner, the purchaser of fractional section 7, east of the river, (sold for 160 acres,) will be entitled under his patent to go to the river, which it would seem was returned as the natural north boundary of his tract on the original plats; also, the purchaser of fractional section 7, west of the river, is entitled to the whole of that section, consisting of two separate fractions, actually containing, according to the new plat, 118.72 acres.

In accordance with your request, I herewith return the papers received, with your communication of the 13th of April last.

I am, sir, very respectfully, your obedient servant,

JAMES WHITCOMB,

Commissioner.

Hon. WILLIAM S. HASTINGS,

House of Representatives.

SURVEYOR'S OFFICE,

Florence, Alabama, February 27, 1841.

DEAR SIR: I have to acknowledge the receipt of your letter of the 16th September last, which was received at this office during my absence to the north. On returning home about the middle of November, I was taken seriously unwell with a severe attack of dysentery, from which I have not yet entirely recovered, but am regaining my health slowly. This will account to you for the apparent neglect in not answering your letter. I now avail myself of the present moment of giving you my opinion of the matters therein asked. As to Judge Crawford's opinion that your land cannot be identified, permit me to say that I differ with him entirely, and I presume your land will be as easily identified as his.

As to the Commissioner's opinion, which confines you to that part of fractional section 6 *west* of Tombigbee, and cutting you off from the 108.72 acres in the bend, I also beg leave to differ, for the reason that you were the purchaser of *all* of fraction 6, none being represented as lying *east* of the river. It certainly will not be contended that the purchaser of fraction 7 *east* of the river can be permitted to follow the river throughout the entire bend, crossing the *south boundary* of section 6, and going into that fraction, and taking that part of section 6 in the bend, and returning down the river into fraction 7 again. I would say he can go *north as far* as the *sectional* line, thence *west* until he strikes the river, and thence down the river to the west boundary. The question then arises, to whom does that part of section 6 *in the bend* belong—to the purchaser of section 6 or the government? But the government has sold all its interest in fraction 6; hence the *purchaser* of fraction 6 is entitled to all of that fraction. The above is my opinion only. I am no lawyer, and would not put my opinion in opposition to the Commissioner, who, I have no doubt, is an able one; but, with due deference, it seems to me to accord with the principles of justice and equity.

To put the matter at rest, it would perhaps be best for you to petition Congress on the subject at the called session, and have the matter settled.

I am, sir, with great respect, your obedient servant,

JAMES H. WEAKLEY.

HENRY NEWMAN, Esq.,

Boston, Massachusetts.

GENERAL LAND OFFICE, January 16, 1844.

SIR: In answer to your communication of the 13th instant, I have to state that the fraction of section six east of Tombigbee river, in township

four north, range two east, St. Stephen's land district, Alabama, containing 108.72 acres, does not appear from the records of this office to have been sold, or in any wise encumbered. The diagrams (marked A and B) received in your communication are herewith returned.

I have the honor to be, very respectfully, your obedient servant,

THO. H. BLAKE,
Commissioner.

Hon. W. WOODBRIDGE,
Senate United States.

Abstract of the act for the relief of Henry Newman and others.

The act of July 2, 1836, (chapter 280,) for the *relief of Henry Newman and others*, requires the irregular numeration of the fractional sections west of the Tombigbee river, of township 4, range 2 east, marked on the official plats or maps as Nos. 35, 36, and 37, to be corrected so as to stand Nos. 5, 6, and 7.

Section 2d declares that the patents issued to William Crawford for said sections 35 and 37, and the patent to Henry Newman, dated September 1, 1824, for section 36, shall be "equally legal and valid as if the same fractional sections had been designated on said maps by their regular numbers when said patents were issued." And the Commissioner of the General Land Office and the register of the land office at St. Stephen's are directed to note the above correction on the books, maps, and records of their respective offices, referring to this act by date; and "the Commissioner of the General Land Office is hereby also directed to certify accordingly the correction affecting each of the said patents, in this respect, upon the back thereof, when presented, with special reference to this act, by which it is authorized."

Part of township 4 north, range 2 east, St. Stephen's land district, Alabama, resurveyed, to wit: sections 5, 6, 7, and 8, as now designated under above act. The survey was made in 1839, examined and approved July 16, 1839, by James H. Weakley, surveyor general of public lands in Alabama, and a plat sent to the General Land Office, July, 1839.

GENERAL LAND OFFICE, *January 29, 1846.*

SIR: In reply to the inquiry made by your letter of the 26th instant, as to the condition of fractional section 6, east of Tombigbee river, township 4 north, of range 2 east, St. Stephen's land district, Alabama, containing 108.72 acres, I have the honor to state that it remains the same as it was on the 16th of January, 1844, the date of the letter from this office to which you refer.

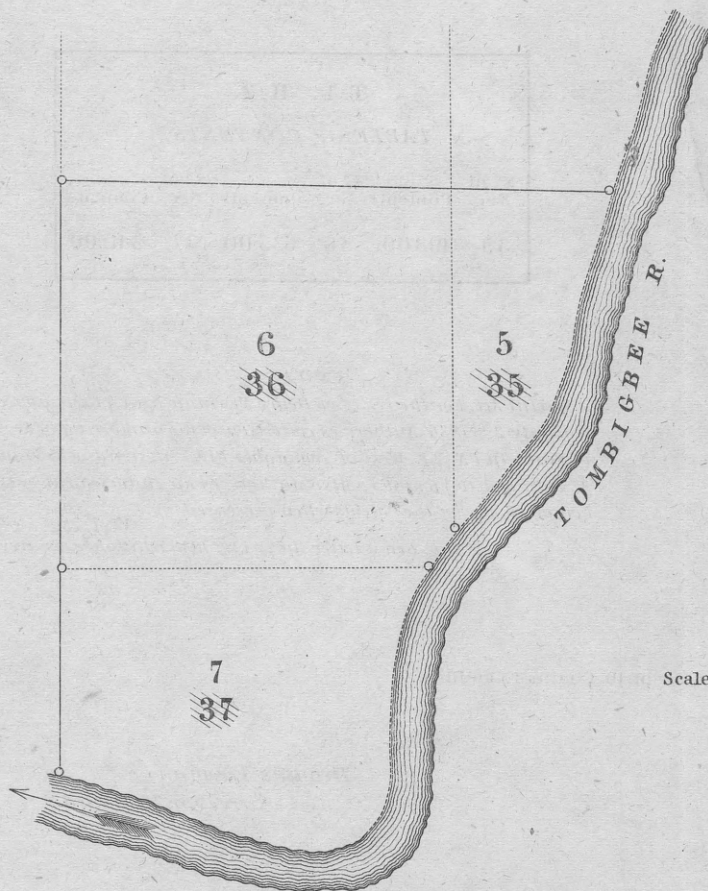
The report enclosed in your communication is herewith returned.

I am, sir, with great respect, your obedient servant,

JAS. SHIELDS, *Commissioner.*

Hon. Wm. WOODBRIDGE,
United States Senate.

A



T. 4. R. 2.

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35	108.00	36	635.00	37	340.00

NOTE

A Special Act. For the relief of Henry Newman and others approved July 2nd 1836 Authorizes correction of the numbering of Sec^s in Frac¹ Tp. 4 N. 2 E. West of Tombigbee River instead of 35, 36 and 37 changed to 5, 6 and 7. Also authorizes an endorsement by the Commissioner on the Patents when presented

W. T. S.

see Sur Gen^l letter April 12th 1838 relating to resurvey

Scale of 40 Chains to an Inch.

Thomas Freeman
Surveyor U.S. Lands

B

PART OF TOWNSHIP N^o 4 NORTH RANGE N^o 2 EAST
LAND DISTRICT S^r STEPHENS AL^a

